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The Honorable Lonny R. Suko

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NORTHWEST ENVIRONMENTAL  
DEFENSE CENTER, a non-profit  
organization,

Case No.: CV-13-105-LRS

**MODIFIED CONSENT  
DECREE**

Plaintiff,

MODIFIED CONSENT DECREE - (No. CV-13-105-LRS) - 1

1  
2 v.  
3 ADM MILLING CO., a corporation,  
4 Defendant.  
5

6 The following Consent Decree is entered into between Plaintiff  
7 Northwest Environmental Defense Center (“NEDC”) and Defendant ADM  
8 Milling Co. and its affiliates (“ADM Milling”). These parties shall be  
9 collectively referred to herein as the “Parties” and individually as a “Party,”  
10 unless specifically identified otherwise.  
11  
12

13 RECEIVED  
14 **WHEREAS**, ADM Milling owns and operates a flour mill facility  
15 located at 2301 East Trent Avenue in Spokane, Washington 99202 (the  
16 “Facility”);  
17

18 **WHEREAS**, under the National Pollutant Discharge Elimination  
19 System (“NPDES”), an Industrial Stormwater General Permit (the “Permit”)  
20 has been issued to ADM Milling by the Washington State Department of  
21 Ecology (“Ecology”);  
22

23 **WHEREAS**, NEDC has alleged in a letter (the “Notice Letter”) dated  
24 December 12, 2012, sent to ADM Milling, that ADM Milling has violated  
25 and continues to violate certain conditions of the Permit and the Clean Water  
26 MODIFIED CONSENT DECREE - (No. CV-13-105-LRS) - 2

1 Act, and that NEDC intended to file a citizen suit pursuant to section 505 of  
2 the Clean Water Act (“CWA”), 33 U.S.C. § 1365;

3  
4 **WHEREAS**, while the parties were engaged in settlement talks,  
5 NEDC filed its Complaint in this action;

6  
7 **WHEREAS**, the parties reached a settlement and pursuant to this  
8 settlement NEDC agreed to dismiss three originally named individual  
9 defendants from this action, and the parties filed a Stipulation of Dismissal  
10 dismissing such defendants with prejudice;

11  
12 **WHEREAS** NEDC then filed, and ADM Milling consented to in  
13 writing, an Amended Complaint naming only ADM Milling as defendant;

14  
15 **WHEREAS**, ADM Milling neither admits nor denies the allegations  
16 NEDC made in the Notice Letter, Complaint or Amended Complaint; and

17  
18 **WHEREAS**, the Parties agree that resolution of this matter without  
19 protracted litigation is in their best interests; and

20 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND**  
21 **AGREED BETWEEN THE PARTIES, AND ORDERED AND DECREED**  
22 **BY THE COURT, AS FOLLOWS:**  
23  
24  
25  
26

JURISDICTION AND VENUE

1  
2 1. For the purposes of entry and enforcement of this Consent  
3 Decree, the Parties stipulate that the United States District Court for the  
4 Eastern District of Washington has jurisdiction over the Parties and subject  
5 matter of this action. The Parties further stipulate that venue is appropriate in  
6 the United States District Court for the Eastern District of Washington.  
7

EFFECT OF CONSENT DECREE AND  
SETTLEMENT AGREEMENT

8  
9 2. This Consent Decree memorializes and is entered into according  
10 to the terms of the Settlement Agreement entered into between the Parties and  
11 which was executed by NEDC on April 25, 2013 and ADM Milling on April  
12 30, 2013 ("Settlement Agreement").  
13

14  
15 3. In the event that there is any inconsistency between the terms of  
16 this Consent Decree and the Settlement Agreement, the terms of the Consent  
17 Decree shall control.  
18

19 4. Neither this Consent Decree nor any payment made pursuant to  
20 this Consent Decree shall constitute evidence or be construed as a finding,  
21 adjudication, or acknowledgement of any fact, law, or liability, nor shall it be  
22 construed as an admission of violation of any law, rule, regulation, permit, or  
23 administrative order by ADM Milling. However, this Consent Decree and  
24  
25  
26

1 any payments made pursuant to this Consent Decree may constitute evidence  
2 in actions seeking to enforce compliance with this Consent Decree.

3  
4 5. The Parties, including any successors or assigns, agree to be  
5 bound by this Consent Decree and not to contest its validity in any  
6 subsequent proceeding to implement and enforce its terms.  
7

8 6. ADM Milling maintains and reserves all defenses it may have to  
9 any alleged violations which could be alleged in the future by a party which  
10 is not a party to this Consent Decree.  
11

12 7. This Consent Decree addresses and fully resolves all violations  
13 alleged by NEDC up to and through the Termination Date of this Consent  
14 Decree, which is set forth in Paragraph 10 below.  
15

16 ~~PLEASE DO NOT REMOVE~~

17 8. The Parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3),  
18 this Consent Decree cannot be entered until forty-five (45) days after the  
19 receipt of a copy of the proposed Consent Decree by the United States  
20 Environmental Protection Agency (“EPA”) and the United States Attorney  
21 General. NEDC shall submit this Consent Decree to EPA and the U.S.  
22 Department Of Justice (“DOJ”) within three days of filing this Consent  
23 Decree with the Court for review consistent with 40 C.F.R. § 135.5. The  
24  
25  
26

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1 agency review period expires 45 days after receipt by both agencies, as will  
 2 be evidenced by the required certified return receipts. Upon expiration of  
 3 the 45-day review period provided by 33 U.S.C. § 1365(c)(3), the Parties will  
 4 jointly move the Court for entry of this Decree. In the event that the EPA or  
 5 the DOJ comment negatively on the provisions of this Consent Decree, the  
 6 parties agree to meet and confer to attempt to resolve the issues raised by  
 7 either agency.  
 8  
 9

10 EFFECTIVE DATE AND TERMINATION DATE

11 9. The “Effective Date” of this Consent Decree shall be the date  
 12 this Court orders entry of this Consent Decree.  
 13

14 10. The “Termination Date” of this Consent Decree shall be on  
 15 August 1, 2015. The Release of Claims, which is set forth in Paragraphs 16-  
 16 18 below, shall survive the Termination Date.  
 17

18 OBLIGATIONS OF THE PARTIES

19 11. **Stormwater Control Improvements.**

20 11.1 Within thirty (30) days of the Effective Date, ADM  
 21 Milling shall have taken the following actions:  
 22

23 (a) Retain an engineer qualified to assist ADM Milling  
 24 in determining the sources of any pollutants being collected in stormwater at  
 25 the Facility and to provide technical expertise required to design and  
 26

1 implement the measures necessary to reduce or eliminate the discharge of  
2 stormwater from the Facility; and  
3

4 (b) Review the Facility's operations and conduct such  
5 onsite investigation, sampling, and testing as necessary to determine the  
6 potential source(s) of pollutants that may be discharged in stormwater from  
7 the Facility.  
8

9 11.2 With the aid of the engineer, ADM Milling shall identify  
10 and design physical and procedural stormwater control measures to reduce or  
11 eliminate the discharge of pollutants in stormwater, or eliminate the  
12 discharge of stormwater.  
13

14 11.3 Within sixty (60) days of the Effective Date, ADM  
15 Milling shall revise its Stormwater Pollution Prevention Plan ("SWPPP") to  
16 include all of the physical and procedural changes identified as necessary to  
17 ensure compliance with the Permit's requirements. The draft SWPPP shall  
18 be submitted to Ecology for review.  
19

20 11.4 Within ninety (90) days of the Effective Date, ADM  
21 Milling shall produce a final revised SWPPP and shall in good faith address  
22 all physical and procedural changes identified by Ecology, if any, as  
23 necessary to ensure compliance with the Permit.  
24  
25  
26

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1 11.5 ADM Milling shall provide NEDC with a confirmation by  
2 email upon completion of each of these measures under this Paragraph 11,  
3  
4 sent to Mark Riskedahl, NEDC Executive Director, msr@nedc.org.

5 12. **Stormwater Sampling.**

6 12.1 ADM Milling agrees to identify any point of discharge to  
7  
8 surface waters or storm sewers at the Facility, including any potential  
9  
10 discharges from the facility to the storm drain located at the corner of E.  
11 Springfield Ave. and N. Crestline St., and modify its SWPPP, if necessary, to  
12 reflect such discharge points within ninety (90) days of the Effective Date.

13 12.2 ADM Milling agrees, in accordance with the Permit, to  
14  
15 either:

16 (a) Monitor each distinct point of discharge; or  
17  
18 (b) Monitor from one point of discharge and provide  
19 documentation as required by condition S.3 of the Permit to establish that  
20 ADM Milling expects the discharge points to discharge substantially  
21 identical effluents. ADM Milling shall update its SWPPP to include this  
22 documentation within ninety (90) days of the Effective Date.

23 12.3 Upon implementation of any measures identified in  
24  
25 Paragraph 11, ADM Milling agrees to monitor 6 times per wet season  
26



1 (October 1 - June 30) for two years, provided that there are a sufficient  
2 number of suitable rainfall events (i.e., precipitation yielding observable  
3 stormwater flow) during each wet season to perform 6 monitoring events, for  
4 pollutants identified in the Permit for stormwater discharges associated with  
5 industrial activity for the Food and Kindred Products sector (turbidity, pH, oil  
6 sheen, copper, zinc, biological oxygen demand, nitrogen, phosphorous).  
7

9 13. **Management and Reporting.**

10 13.1 ADM Milling shall designate an employee responsible for  
11 the operation, maintenance and upkeep of the stormwater management  
12 measures described in the Facility's SWPPP, the requirements of the Permit  
13 and the terms of this Consent Decree. Such designated employee shall  
14 receive training necessary to conduct sampling, record keeping and reporting  
15 under the Permit, and fulfill the requirements of this Consent Decree.  
16

17 13.2 ADM Milling shall develop a monthly compliance  
18 checklist that includes each requirement of the Permit and the monitoring and  
19 sampling as required in Paragraph 12.3.  
20

21 13.3 ADM Milling shall complete monthly compliance checks  
22 using the checklist it develops for each month from July 2013 through June  
23 2014.  
24

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1           13.4 ADM Milling shall conduct semi-annual audits of the  
2 Facility's compliance with the Permit. Such audits shall occur on or before  
3 July 15, 2013; January 15, 2014; July 15, 2014; and January 15, 2015. ADM  
4 Milling agrees to employ audit results to revise or otherwise improve its  
5 SWPPP as suggested by its auditor.  
6

7  
8           13.5 ADM Milling shall submit by email copies of the DMRs  
9 submitted to Ecology, copying NEDC as part of its submittal, Mark  
10 Riskedahl, NEDC Executive Director, msr@nedc.org. NEDC agrees not to  
11 use these results against ADM Milling in the development or prosecution of  
12 any enforcement action.  
13  
14

15           14. **Payments.**

16           14.1 Within thirty (30) days of the Effective Date, ADM  
17 Milling shall make a payment in the amount of fifteen thousand dollars  
18 (\$15,000) to the Spokane Riverkeeper, a nonprofit organization located in  
19 Spokane. The funding will support an environmental education and outreach  
20 project as more fully described in Paragraph 15. The Spokane Riverkeeper  
21 shall provide ADM Milling with four accountings specifying the amount and  
22 purpose of expenditures and indicating funds remaining from the \$15,000.  
23  
24

25 Such accountings shall be provided on August 31, 2013, February 28, 2014,  
26

1 August 31, 2014, and upon completion of the project. In the event there are  
2 any funds remaining from the \$15,000 upon completion of the project,  
3  
4 Spokane Riverkeeper shall transfer the remaining funds to the City of  
5 Spokane's Stormwater Management Program,  
6  
7 <http://spokanestormwater.com/Stormwater.aspx>.

8 14.2 In addition to the payment set forth in the preceding  
9 paragraph, the Parties agree to suspend a payment of twelve thousand dollars  
10 (\$12,000).  
11

12 (a) If, at any time after ADM Milling produces a final  
13 revised SWPPP, it fails to comply with its obligations under this Consent  
14 Decree, ADM Milling shall pay the Spokane Riverkeeper one thousand  
15 dollars (\$1,000) per month during each month in which ADM Milling is not  
16 in compliance with this Consent Decree.  
17  
18

19 (b) In no event shall the payments under this paragraph  
20 exceed a total of twelve thousand dollars (\$12,000).  
21

22 (c) NEDC agrees that these suspended payments shall  
23 be NEDC's exclusive remedy against ADM Milling.  
24

25 14.3 Within thirty (30) days of the Effective Date, ADM  
26 Milling shall make a payment to NEDC in the amount of \$17,500. NEDC

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1 shall use this payment to offset necessary fees and costs incurred in this  
2 action.

3  
4 **S.** SPokane Riverkeeper Project

5 15. Over a period of 18 months, the Spokane Riverkeeper, with the  
6 sponsorship of ADM Milling, and with the cooperation of the Spokane River  
7 Forum/EnviroStars Program, will utilize ADM's payment of \$15,000, as set  
8 forth in Paragraph 14.1, exclusively to implement a stormwater education  
9 program directed at businesses in the Union Basin in Spokane. The project  
10 will consist of three primary elements:  
11  
12

13 15.1 Door-to-door visits to provide businesses with copies of  
14 the "Understanding Stormwater Permitting" manual that was created by the  
15 City of Spokane, Gonzaga University, the Spokane River Forum and Spokane  
16 Riverkeeper. A copy of the manual can be found here:  
17 [http://www.spokaneriver.net/?page\\_id=7688](http://www.spokaneriver.net/?page_id=7688).  
18  
19

20 15.2 Developing new education materials that have proven  
21 effective to educate businesses on stormwater/spill management issues. In  
22 particular, the project will include printing of the "Keep it Clean: Use the  
23 4Cs" posters and spill response cards. These, along with spill response kits  
24 for small businesses, will be provided as part of the individual business  
25  
26

1 outreach efforts. The Spokane Riverkeeper will invite ADM Milling and  
2 other community partners to provide logos to place on the educational  
3 materials and spill kits to recognize their support of these efforts and  
4 commitment to addressing stormwater in the community. All of these  
5 outreach techniques have been demonstrated by a recent study as effective  
6 methods of business outreach as indicated by a Cunningham Environmental  
7 Consulting study titled, "Stormwater Business Education Template:  
8 FocusGroup Report."

9 See: [http://www.ecy.wa.gov/programs/wq/stormwater/municipal/MUNIdocs/](http://www.ecy.wa.gov/programs/wq/stormwater/municipal/MUNIdocs/FocusGroupReportKitsapBizTemplate.pdf)  
10 [FocusGroupReportKitsapBizTemplate.pdf](http://www.ecy.wa.gov/programs/wq/stormwater/municipal/MUNIdocs/FocusGroupReportKitsapBizTemplate.pdf). Examples of these materials are  
11 attached.

12  
13  
14  
15  
16 15.3 A community workshop will be conducted to advance the  
17 understanding of stormwater management and stormwater permitting  
18 requirements. The workshop will be directed by the water resources staff  
19 from the Spokane Community College, as well as staff from city permitting,  
20 regulatory agencies, and interested businesses. ADM Milling will be invited  
21 to participate in a role they see fit and appropriate.  
22  
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RELEASE OF CLAIMS

16. NEDC releases and discharges ADM Milling and the officers, directors, shareholders, employees, agents, affiliates and consultants of ADM Milling from any and all claims, causes of action, or liability under the Clean Water Act, 33 U.S.C. § 1251 et seq., or any other federal, state or common law, for damages, penalties, fines, injunctive relief, or any other claim or relief:

16.1 Relating to or resulting from discharges or releases of pollutants from the Facility occurring prior to the Termination Date; and

16.2 For any matter, including past violations, alleged in the Notice Letter, Complaint and Amended Complaint; and

16.3 For any alleged violations of the Permit, ADM Milling's SWPPP, the Clean Water Act and its regulations, or related state law and regulations, occurring prior to the Termination Date.

17. The Parties agree that this Consent Decree is in full settlement of all civil and administrative claims and liabilities which might have been asserted by NEDC against ADM Milling for any violations which may have occurred or are alleged to have occurred prior to the Effective Date, and up to and through the Termination Date.

1           18. ADM Milling releases and discharges NEDC, its  
2 representatives, assigns, agents, employees, officers, and attorneys from any  
3 and all claims, liability, demands, penalties, costs and causes of action of  
4 every nature which concern matters covered in Paragraph 16.  
5

6  
7 DISPUTE RESOLUTION AND CONTINUING JURISDICTION

8           19. If a dispute under this Consent Decree arises, or if either Party  
9 believes that a breach of this Consent Decree has occurred, the Parties shall  
10 meet and confer within fourteen (14) days of receiving written notification  
11 from the other Party of a request for a meeting. This notification shall  
12 explicitly state the nature, the underlying facts and the legal grounds for the  
13 dispute or alleged breach. At this meeting, the Parties shall discuss the  
14 dispute or alleged breach and seek to develop a mutually agreed upon plan,  
15 including implementation dates, to resolve the dispute or alleged breach. If  
16 the Parties fail to meet and confer or if the meeting does not resolve the issue,  
17 and after at least seven (7) days have elapsed since the meet and confer  
18 occurred or should have occurred, each Party shall be entitled to all rights  
19 and remedies under the law, including bringing a motion before the Court.  
20  
21

22           20. The Court shall retain jurisdiction over the Parties for the term  
23 of this Consent Decree with respect to: (i) disputes arising under this Consent  
24  
25  
26

1 Decree for which any of the Parties invoke the dispute resolution provision  
2 herein; (ii) enforcement of this Consent Decree; and (iii) modification or  
3 termination of this Consent Decree in whole or in part.  
4

5 GENERAL PROVISIONS

6 21. Construction. The language in all parts of this Consent Decree,  
7 unless otherwise stated, shall be construed according to its plain and ordinary  
8 meaning.  
9

10 22. Permit Terms. In the event any of the rights or obligations of  
11 the Parties as set forth in this Consent Decree are found to be in conflict with  
12 the terms of the Permit, including terms of the Permit as it may be revised,  
13 altered, amended or withdrawn in the future, the Permit terms shall control.  
14 The Parties further agree that a withdrawal, termination or discontinuance of  
15 the Permit by Ecology shall terminate ADM Milling's obligations hereunder.  
16

17 23. Severability. In the event any of the provisions of this Consent  
18 Decree are held by a court to be unenforceable, the validity of the enforceable  
19 provisions shall not be adversely affected  
20

21 24. Entire and Final Agreement/Modification. This Consent Decree  
22 shall constitute the entire and final agreement among the Parties concerning  
23 the subject matter of this action and shall supersede all previous  
24



1 correspondence, communications, agreements and understandings, whether  
2 oral or written, between the Parties. This Consent Decree may not be  
3  
4 modified, in whole or in part, except in writing and signed by the Parties,  
5 with the approval of the Court.

6  
7 25. Force Majeure. If ADM Milling is prevented from performing  
8 its duties under this Consent Decree by circumstances beyond its control,  
9 including, without limitation, fire, flood, labor dispute, or act of God (“Force  
10 Majeure”), or action or non-action by, or inability to obtain the necessary  
11 authorizations or approvals from, any government agency, then ADM Milling  
12 shall be excused from performance hereunder during the period of such  
13 disability. Notwithstanding anything herein to the contrary, the term “Force  
14 Majeure” does not include, and ADM Milling shall not be excused from  
15 performance under this Consent Decree for, events relating to increased  
16 costs, including, without limitation, increased costs of fuel, labor, insurance,  
17 or other expenses of performing the obligations hereunder.  
18  
19  
20

21  
22 26. Choice of Law. This Consent Decree shall be governed by and  
23 construed in accordance with the laws of the State of Washington, except to  
24 the extent federal law applies to its subject matter or enforcement.  
25  
26

1        27. Counterparts/Signatures. This Consent Decree may be executed  
 2 in any number of counterparts, all of which together shall constitute one  
 3 original document. Facsimile or scanned copies of original signatures shall  
 4 be deemed to be originally executed signatures.  
 5

6        28. Authority. The Parties certify that their undersigned  
 7 representatives are fully authorized to enter into this Consent Decree, to  
 8 execute it on behalf of the Parties and to legally bind the Parties to its terms.  
 9

10        29. Court Approval. If for any reason the Court should decline to  
 11 approve this Consent Decree in the form presented, the Parties shall use their  
 12 best efforts to work together to modify this Consent Decree within thirty (30)  
 13 days so that it is acceptable to the Court.  
 14

15        The Parties hereby enter into this Consent Decree.  
 16

17 DATED this \_\_\_\_ day of \_\_\_\_ 2013.    NORTHWEST ENVIRONMENTAL  
 18 DEFENSE CENTER  
 19

20  
 21 \_\_\_\_\_  
 22 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 23

24 DATED this \_\_\_\_ day of \_\_\_\_ 2013.    By: s/Marla S. Nelson  
 25 MARLA S. NELSON, WSBA  
 26 #45611  
 Northwest Environmental Defense

MODIFIED CONSENT DECREE - (No. CV-13-105-LRS) - 18

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Tel: (503) 768-6726  
msnelson@nedc.org  
*Attorneys for Plaintiff*

DATED this \_\_\_\_ day of \_\_\_\_ 2013. ADM MILLING CO.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

1  
2  
3 DATED this 8th day of July, 2013.

By: s/ Harry Edward Grant

Harry Edward Grant, WSBA #13494

Margaret K. Cerrato-Blue, WSBA  
#23812

RIDDELL WILLIAMS P.S.

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*Attorneys for Defendant ADM*

*Milling Co.*

1  
2 IT IS HEREBY ORDERED that this Consent Decree is approved and  
3 entered accordingly, subject to the ongoing jurisdiction of the Court for the  
4 purposes of enforcement of this Consent Decree.  
5

6 APPROVED AND SO ORDERED:

7 DATED: July 24, 2013  
8

9 *s/Lonny R. Suko*

10 \_\_\_\_\_  
11 The Honorable Lonny R. Suko  
12 United States District Court  
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